PART IV

Section 1-A.

CENTRAL BILLS AND REPORTS OF SELECT COMMITTEES THEREON.

NOTIFICATION.

No. L.D 991—Legis. 33-52-4, dated Bangalore, 1st September 1952.

In pursuance of the adoption of a motion by Parliament on the 30th July 1952 the Muslim Wakfs Bill, 1952, with the Statement of Objects and Reasons, is hereby published for the purpose of eliciting opinion of the public thereon.

The last date within which opinions may be sent is the 30th October 1952.

Opinions should be sent addressed to the Secretary to Government of Mysore, Law Department, Old Public Offices, Bangalore 1.

Opinions sent direct to the Parliament Secretariat, New Delhi, or to any other Ministry of the Government of India will not be considered.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,

Legal Remembrancer and
Secretary to Government,
Law Department.

Bill No. 85 of 1952.

THE MUSLIM WAKFS BILL.

[AS INTRODUCED IN THE HOUSE OF THE PEOPLE].

A

BILL

to provide for the better governance and administration of Muslim Wakfs and the supervision of Mutawallis' management of them, in India.

BE it enacted by Parliament as follows :—

CHAPTER I.

PRELIMINARY.

1. *Short title, extent and commencement.*—(1) This Act shall be called the Muslim Wakfs Act, 19 .

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) This section and sections 2 to 4 shall come into force at once. The rest of the Act shall not come into force until such date as the Government may by notification in the Official Gazette, appoint in this behalf.

2. *Application of the Act.*—This Act shall apply to all Wakfs whether created before or after the commencement of this Act and situated in any of the following States :—

Bombay, Madhya Pradesh, Madras, Orissa, Punjab, West Bengal, Hyderabad, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra and Bhopal,

and Chapter III of the Act shall further apply to all Wakfs situated in Bihar, Uttar Pradesh, Ajmer and Delhi :

Provided that the Union Government may by notification in the Official Gazette apply the Act to Wakfs situated in any other States or the whole of the Act to the Wakfs situated in Bihar, Uttar Pradesh, Ajmer or Delhi :

Provided further that the Union Government on the recommendation of a State Government may by notification in the Official Gazette exempt any Wakfs from the operation of this Act.

3. *Definitions.*—In this Act unless there is anything repugnant in the subject or context,—

(*a*) 'Alim' means a person who is a diploma holder of a 'madarsa Arabia' as defined in clause (7) of this section ;

(*b*) 'beneficiary' means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects, and any other objects of public utility established for the benefit of the Muslim community ;

(*c*) 'benefit' does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli ;

(*d*) 'Board' means Board of Muslim Wakfs constituted under this Act ;

(*e*) 'court' means unless otherwise stated either expressly or by implication, the court of the District Judge, or any court empowered by the Government to exercise jurisdiction under this Act ;

294

(*f*) 'family' includes :—

(*a*) descendants,

(*b*) parents and grand parents,

(*c*) wife or husband, and

(*d*) persons related through any ancestor male or female, who live with and are maintained by the wakf ;

(*g*) 'Jamiat-Ulema' means Jamiat-Ulamai-Hind which has got its head-office at Delhi and includes all its branches in the various States of India ;

(*h*) 'madarsa Arabia' includes any educational institution wherein,—

(i) the Nizami Course or Shia Theological Course or Oriental Course of studies is prescribed for grant of degrees :

Provided that a madarsa in which Shia Geological Course is prescribed shall be called 'Shia madarca Arabia' and all the rest shall be called 'Sunni madarsa Arabia',

(ii) there are at least two teachers to teach Arabic, and

(iii) the annual budget, at least for the previous two years has amounted to a sum of five thousand rupees ;

(*i*) 'mutawalli' means a manager of a wakf or endowment and includes, an *Amin*, a *Sajjadanishin*, a *Mujawar*, a *Khadim*, a *Naib* Mutawalli, a committee of management and save, as otherwise provided in this Act any person who is for the time being in-charge of, or is administering, any endowment as such ;

(*j*) 'net income' means the total income minus land revenue, and other cesses payable to the Government and local bodies ;

(*k*) 'person interested in wakf' means any person who is entitled to receive any pecuniary or other benefit from the wakf and includes,—

(i) any person who has a right to worship or to perform any religious rite in a mosque, *idgah*, *imambara*, *dargah*, *khangah*, *maqbara*, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf ;

(ii) the 'wakif' and any descendant of the wakif, and the mutawalli ;

(*l*) 'prescribed' means prescribed by rules made by the Government and includes bye-laws made by the Board under this Act ;

(*m*) 'property' includes Government security bonds, shares in firms, and companies, stocks, debentures, and other securities and instruments ;

(*n*) 'Shia Conference' means All India Shia Conference which has its head-office at Lucknow and includes all its branches in the various States of India ;

(*o*) 'Shia Political Conference' means All India Shia Political Conference and includes all its branches in the various States of India.

CHAPTER II.

Survey of Wakfs and Boards of Wakfs.

4. *Survey of wakfs.*—(1) Within three months of the commencement of this Act the Government of each of the States to which this Act applies shall by notification in the Official Gazette appoint for each district a Gazetted Officer, either by name or by official designation, for the purpose of making a survey of all wakfs. Such Officer shall be called "The Commissioner of Wakfs".

(2) The State Government may, from time to time when necessary, cancel any appointment made under sub-section (1) or make a new appointment.

(3) "The Commissioner of Wakfs" shall, after making such enquiries as he may consider necessary, ascertain and determine,—

(*a*) the number of all Muslim wakfs showing Shia or Sunni wakfs respectively:

Provided that when there is a dispute whether a particular wakf is a Shia wakf or a Sunni wakf and there are clear indications as to the sect to which it pertains in the deed of wakf, such dispute shall be decided on this basis;

(*b*) the nature of each wakf,

(*c*) the gross income of property comprised in the wakf,

(*d*) the amount of Government Land Revenue cesses and taxes payable in respect of wakf property,

(*e*) expenses incurred in the realization of the income and the pay of the Mutawalli of each wakf.

(4) In making such enquiries as aforesaid the Commissioner of Wakfs shall exercise all the powers of a civil court for summoning and examining witnesses and documents, making local inspections, appointing commissioners for examination of witnesses, examining of accounts and making local investigations.

(5) The Commissioner of Wakfs shall submit his report of enquiry to the Government.

(6) The total cost of carrying out the provisions of this section and section 5 shall be borne by the Mutawallis of all wakfs in proportion to the income of the property of such wakf situated in the State to be assessed by the Chief Commissioner of Wakfs appointed under section 5.

(7) Notwithstanding anything contained in the deed or instrument of creating any wakf, any Mutawalli may pay from the income of the wakf any sum due from him under sub-section (6).

(8) Any sum due from a Mutawalli under sub-section (6) may, on a certificate issued by the Government, be recovered in the manner provided by law for recovery of an arrear of Land Revenue.

5. *Appointment of Additional Commissioners of Wakfs.*—(1) In addition to the Commissioner of Wakfs, appointed under section 4, the Government may, by notification in the Official Gazette appoint as many "Additional Commissioners of Wakfs" in each State as it may think necessary. The duties and powers of the Additional Commissioners of Wakfs shall be the same as those of the Commissioners of Wakfs under section 4.

(2) One of such Additional Commissioners of Wakf shall be appointed the 'Chief State Commissioner of Wakfs' for the purpose of sub-section (3).

(3) The Chief State Commissioner of Wakfs shall apportion the work of survey between the Additional Commissioners of Wakfs in such manner as he may think proper, and shall direct by whom any enquiry made or report should be submitted and such an enquiry made or a report submitted by an Additional Commissioner of Wakf shall, for the purposes of this Act, be deemed to be the inquiry or report, as the case may be of the Commissioner of Wakfs, under sub-section (5) of section 4:

Provided that a survey made in the State before the commencement of the Act shall be deemed to have been made under the Act.

6. *Commissioner's report.*—(1) The Government shall forward a copy of the report of the Commissioner of Wakfs to the Board. The Board shall as soon as

possible notify in the Official Gazette the wakfs, to which, according to such reports the provisions of this Act apply.

(2) The Mutawalli of a Wakf or any person interested in a wakf or the Board may bring a suit in a Civil Court of competent jurisdiction for a declaration that any transaction held by the Commissioner of Wakfs to be a wakf, is not a wakf, or any transaction held or assumed by him not to be a wakf, is a wakf or that wakf held by him to pertain to a particular sect does not belong to that sect:

Provided that no such suit shall be instituted by the Board after more than two years of the receipt of the report of the Commissioner of Wakfs and by a Mutawalli or person interested in a wakf after more than two years after notification referred to in sub-section (1):

Provided further that no proceedings under this Act in respect of any wakf shall be stayed or suspended merely by reason of the pendency of any such suit or of any appeal arising out of any such suit.

(3) Subject to the final result of any suit instituted under sub-section (2) the report of the Commissioner of Wakfs shall be final and conclusive.

(4) The Commissioner of Wakfs shall not be made a defendant to any suit under sub-section (2) and no suit shall be instituted against him for anything done by him in good faith in due discharge of his duties under the Act.

7. *Establishment of Board.*—(1) Each State Government shall establish within its territory a 'Board of Muslim Wakfs'.

(2) Each such Board shall be a body corporate, and shall have perpetual succession and a common seal, with power to acquire and hold property and to transfer any such property subject to the conditions and restrictions prescribed and shall by its said name, sue and be sued.

8. *Constitution of the Board.*—'The Board' shall consist of,—

(*a*) four members to be elected in the manner prescribed by Muslim members of the respective State Legislatures,

(*b*) four members to be elected in the manner prescribed by the Muslim members of the district boards, Municipal Boards, Town area and Notified area Committees of the respective States,

(*c*) four members to be elected in the manner prescribed by the Jamiat-Ulema and the teachers of the Sunni Madarsas Arabia,

(*d*) two members to be elected in the manner prescribed, by Shia Political Conference and Shia Conference and the teachers of the Shia Madarsas Arabia,

(*e*) One Mutawalli to be co-opted by the Sunni members of the Board and one Mutawalli to be co-opted by the Shia members of the Board,

(*f*) the President to be elected by the members of the Board if he is not one of the above seventeen members:

Provided that no Mutawalli of a Wakf shall be entitled to be elected in any of the categories save as provided in clause (*e*):

Provided further that where any one of the bodies referred to in sub-clauses (*c*) and (*d*) does not exist, the right of election shall be vested in the other body or bodies mentioned in each sub-clause respectively which is or are existing at that time.

9. *Election of Members.*—(1) If at any election of the Board no Muslim member is available under clauses (*a*) and (*b*) of section 8, the requisite number of such members shall be elected by the bodies referred to in sub-clauses (*c*) and (*d*) to the extent of one half each and on their failure to do so within the time fixed by the State Government, the deficiency shall be made up by nomination by the State Government.

(2) If the bodies referred to in clauses (*c*) and (*d*) fail to return the requisite number of members within the time as may be fixed by the State Government the deficiency shall be made up by nomination by the State Government.

10. *Disqualification of a member.*—A person shall not be eligible for appointment or election as a member, if such person—

(*a*) is not a Muslim ;

(*b*) is less than twenty years of age ;

(*c*) is of unsound mind ; and stands so declared by a competent court ;

(*d*) has applied for being adjudged an insolvent or is an undischarged insolvent ;

(*e*) has been convicted of any offence under this Act ;

(*f*) has been convicted of any such offence or is subjected by a criminal court to any such order as implies moral turpitude ; and

(*g*) has on any previous occasion, been removed from office or by order of a competent court from any position of trust either for mismanagement or for corruption.

11. *Term of Membership.*—The members of the Board shall hold office for five years :

Provided that an elected or co-opted member shall, notwithstanding the expiration of his term of office, continue to hold office until the vacancy caused by expiration of the said term has been filled.

12. *Situation of Office.*—The office of the Board shall be located at such a place as is determined by the State Government.

13. *Quorum.*—The quorum for a meeting of the Board shall be seven.

14. *Decision.*—The decision of the Central Board shall be by a majority of its members present and voting. In case of equal division the President shall have a second or a casting vote :

Provided that the question of the use of surplus fund of Sunni or Shia Wakfs or the income of wakfs in accordance with the cypres doctrine and in case of those wakfs the objects of which are not evident from any written instruments or in cases in which the objects for which they were created have ceased to exist, shall be determined by the Board, by the votes, of only Sunni or Shia members present at the voting in respect of Sunni or Shia Wakfs respctively.

15. *Meetings of the Board.*—(1) The Board shall meet for the transaction of the business at least once in every three months and as often as is necessary to meet for the transaction of the business.

(2) Every meeting of the Board shall be convened by the Secretary, under the direction of the President and at least three weeks' notice shall be given to the members.

16. *Special Meetings of the Board.*—The special meetings of the Board shall be called by the President on the receipt of a requisition signed by not less than six members and specifying the business to be transacted at such meeting :

Provided that if the President fails to call such meeting within one month after the receipt of such a requisition, the meeting shall be called by the members who have signed the requisition,

17. *President and Secretary.*—(1) Each Board shall have a President and a Secretary who shall be Muslims :

Provided that no Mutawalli of a wakf or a Government Treasurer or a whole-time servant of the Government or the servant of any wakf administration, shall be elected as the President.

(2) Immediately after the formation of the Board and subsequently whenever it becomes necessary by reason of an existing or anticipated vacancy or otherwise to appoint a President, the Board shall elect one of its members or any other person as its President. The President shall be honorary and shall hold office for a term of five years, but if he is a member of the Board his term shall expire on the expiry of his term as a member.

(3) The Board shall appoint a Government Gazetted Officer as its whole-time Secretary on such terms or allowances and other conditions of service as may be prescribed:

Provided that if a Government Gazetted Officer is not available the Board may appoint another person.

18. *Staff of Board.*—(1) The Board may appoint such officers and staff including superintendents of wakfs, inspectors, auditors, and the like, on such salaries, allowances and conditions of service as may be necessary for the purpose of this Act and for such a period as it may think fit.

(2) The President, Secretary and all other persons appointed under sub-section (1) shall be deemed to be public servants within the meaning of the Indian Penal Code, 1860.

(3) The Board may fine, suspend dismiss or remove a Secretary who is not a Government Gazetted Officer, or any other person appointed by it under sub-section (1):

Provided that the Secretary who is a Government Gazetted Officer, shall be liable to removal by the State Government on the recommendation of the Board.

19. *Functions of the Board.*—(1) The General Superintendence of all wakfs to which this Act applies shall vest in the Board. The Board shall do all things reasonable and necessary to ensure that wakfs or endowments under its superintendence are properly maintained, controlled and administered and duly appropriated to the purposes for which they were founded or for which they exist.

(2) Without prejudice to the generality of the provisions of sub-section (1) the powers and duties of the Board shall be,—

(*a*) to complete and maintain an authentic record of rights containing information relating to the origin, income, object and beneficiaries of every wakf in each district,

(*b*) to prepare and settle its own budget,

(*c*) to settle and pass budget submitted by the Mutawallis, to the Board:

Provided it is in consonance with the wishes of the wakf and is in accordance with the terms of the deed of wakf, or that of a resolution of the Board, if any,

(*d*) to appoint and remove Mutawallis according to the provisions of this Act,

(*e*) to institute and defend suits and proceedings in a court of law relating to,—

(i) administration of wakfs,

(ii) taking of accounts,

(iii) appointment and removal of Mutawallis in accordance with the deed of wakf,

(iv) putting the Mutawallis in possession of a wakf or removing him from that possession,

(v) settlement or modifications of any scheme or management,

(*f*) to sanction the institution of suits under section 92 of the Code of Civil Procedure, 1908, relating to wakfs, to which this Act applies,

(*g*) to take measures for the recovery of lost properties of any wakf,

(*h*) to settle schemes of management for a wakf or application of surplsu fund of a wakf or income of wakf properties of a wakf in accordance with the cypres doctrine in case of those wakfs, the objects of which are not evident from any written instrument or in cases in which the object for which they were created have ceased to exist,

(*i*) to enter upon and inspect wakf property,

(*j*) to cause inspection to be made of the property and the office of a wakf including accounts, and to authorise the Secretary, or any of its members, officers, or servants for that purpose,

(*k*) to investigate into the nature and extent of wakfs and properties of the wakf and call from time to time accounts and other returns and information from the Mutawallis and give directions for the proper administration of wakfs,

(*l*) to arrange for the auditing of accounts submitted by Mutawallis,

(*m*) to direct, the deposit of surplus money in the hands of a Mutawalli in any approved bank or to utilize it according to the resolution of the Board,

(*n*) to administer the Wakf Fund,

(*o*) to keep regular account of receipts and disbursements and submit the same, in the manner prescribed,

(*p*) to institute when necessary an enquiry relating to the administration of the wakf :

Provided that in the appointment of Mutawallis or making any other arrangement for the management of wakf property, the Board shall be guided as far as possible by the directions of wakf, if any,

(*q*) to sanction leases of properties for more than three years or mortagage or exchange properties according to the provisions of the Muslim Law :

Provided that at least three-fourths of the members of the Board vote in favour of such a transaction,

(*r*) to furnish to the State Government or to any such officer as the State Government may appoint in this behalf, any statement, report, return or other documents or any other information which the State Government or any such officer, as the case may be, may require from time to time,

(*s*) to direct the Mutawalli to institute and defend suits in courts of law, and take necessary action in respect of wakf property :

Provided that in case of failure of Mutawalli to do so, or in case when there is no Mutawalli or when the office of Mutawalli is disputed, the Board shall do all these things itself and shall incur the necessary expenses from the wakf fund,

(*t*) to realise, in the prescribed manner, and subject to prescribed conditions, out of the income of any wakf, the costs incurred by the Board in any of the matters mentioned in clause (*s*), in respect of such wakf,

(*u*) to permit a Mutawalli to retire from his office, and in case the Mutawalli has power to appoint his successor, to permit him to make appointment in his life time.

20. *Delegation of Powers.*—The Board may delegate any of its powers and duties under this Act to the President or Secretary or to any one or more of its members and may likewise withdraw such delegation.

21. *Establishment of Committees.*—The Board whenever it considers necessary, may establish, either generally for a particular purpose or in any specific area or areas, committees for the supervision of wakfs in that area. The constitution,

functions and duties of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees that they should be members of the Board also.

22. *Removal of a member.*—The State Government on a report by the Board may, by notification in the Official Gazette, remove any member from the Board if he—

(*a*) refuses to act or becomes incapable of acting as a member of the Board, or

(*b*) becomes subject to any disqualification mentioned in section 10,

(*c*) without excuse, sufficient in the opinion of the Board, is absent without the consent of the Board, for more than six consecutive meetings of the Board.

23. *Resignation of a member.*—A member of the Board may resign his office by giving notice in writing to the President and on such resignation being accepted by the Board, shall be deemed to have vacated his office.

24. *Filling up of a vacancy.*—When a seat of a member becomes vacant by his removal, resignation or death, a new member shall be elected or co-opted as the case may be, in the manner provided in section 8 and shall hold office as long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred:

Provided that no act or order of the Board or its officer shall be deemed invalid by reason only that the member or members of the Board at the time of the preference of such an act or at the passing of such an order was less than the number provided in section 7.

25. *Removal of President.*—The State Government may remove the President if the President,—

(*a*) is or becomes subject to any disqualification specified in section 10,

(*b*) refuses to act or becomes incapable of acting, or acts in a manner which the State Government after hearing any explanation that he may offer, consider to be prejudicial to the interest of wakfs, or

(*c*) if he fails without execuse to attend three consecutive meetings of the Board.

26. *Opinion of the Board.*—The mutawalli of any wakf governed by this Act may apply by petition to the Board for its opinion, advice or direction on any question affecting the management or administration of the property of such wakf and the Board shall give such opinion, advice or direction:

Provided that the Board shall not be bound to give such opinion, advice or direction on any question which is not in its opinion a fit question for summary disposal.

27. *Inspection and copies of Records.*—The Board may grant inspection and copies of its proceedings or other records in its custody on payment of such fees and subject to such conditions as may be prescribed by rules. All copies issued under this section shall be certified by the Secretary of the Board in the manner provided in section 76 of the Indian Evidence Act, 1872.

CHAPTER III.

CENTRAL BOARD OF MUSLIM WAKFS.

28. *Central Board of Muslim Wakfs.*—(1) The Union Government shall establish in the Union of India a Central Board of Muslim Wakfs.

(2) The Central Board of Muslim Wakfs shall be a body corporate and shall have perpetual succession and a common seal, with power to acquire and hold property and to transfer any such property subject to the conditions and restrictions prescribed and shall by its said name sue and be sued.

29. *Constitution of the Central Board.*—The Central Board shall consist of :—

(*a*) one member from each of the following States to be elected by the members of Board of Muslim Wakfs in that State :—

(1) Hyderabad, (2) Madhya Bharat, (3) Madhya Pradesh, (4) Rajasthan, (5) East Punjab, (6) Patiala and E.P. States, (7) Orissa, and (8) Saurashtra ;

(*b*) two members from each of the following 3 States to be elected by the members of the Board of Muslim Wakfs in each of the States, one of them being a Shia and the other a Sunni :—

(1) West Bengal ; (2) Bombay ; (3) Madras ;

(*c*) two members to be elected by the members of the two Boards established in U.P. under Muslim Wakf Act, 1936, (XIII of 1936). Each of the two Boards electing one member each separately ;

(*d*) two members to be elected by the members of the two Boards established in Bihar under the Bihar Wakfs Act, 1948 (VIII of 1948). Each of the two Boards electing one member each separately ;

(*e*) two members to be elected by the two Boards established in Delhi under the Delhi Muslim Wakfs Act, 1943, each of the two Boards electing one member each separately ;

(*f*) one member to be elected by the members of the Board of Ajmer constituted under the Durgah Khwaja Sahib Act, 1936 (XXIII of 1936) ;

(*g*) four members to be co-opted by the elected members of the Board, one of them being a Sahib and three of them being Sunni members ;

(*h*) the President, if he is not one of the members :

Provided that in case where a Board has not been regularly constituted as mentioned in clauses (*a*) and (*b*), the Central Board shall nevertheless begin to function without a member from such a Board of the State, but the State Boards shall have the right of electing their representatives for the Central Board as soon as it is constituted.

30. *Term of Membership.*—The members of the Central Board shall hold office for a period of five years and in case of members elected by the State Boards the period of their membership of that Board or five years, whichever is less:

Provided that an elected or co-opted member shall, notwithstanding the expiration of his term of office, continue to hold office until the vacancy caused by the expiration of the said term has been filled.

31. *Situation of Office.*—The office of the Central Board shall be located at Delhi :

Provided that the members of the Board shall have the power of changing the location of the office by passing a resolution to that effect by a majority of the total membership of the Board and a majority of not less than two-thirds of the members of the Board present and voting.

32. *Quorum.*—The quorum to constitute a meeting of the Central Board shall be seven, provided that the Board shall have power to change the number of means of Rules made in that behalf.

33. *Decision.*—The decision of the Central Board shall be by a majority of its members present and voting. In the case of an equality of votes, the President shall have and exercise a second or casting vote :

Provided that the question of the use of the surplus funds or the income of wakfs in accordance with the cypres doctrine and in case of these wakfs the objects of which are not evident from any written instrument or in cases in which the objects for which they were created have ceased to exist, shall be determined by the Central Board by the votes of only Sunni or Shia members present at the meeting in respect of Sunni or Shia wakfs respectively.

34. *Meetings of the Central Board.*—(1) The Board shall meet for the transaction of business at least once in every year, and this meeting shall be termed the Annual meeting.

(2) The date of the meeting of the Board shall be fixed by the Secretary, under the directions of the President and at least one month's notice shall be given to the members in respect of the dates so fixed :

Provided that the date of the first meeting of the Board after this Act comes into force shall be fixed by the Union Government by notification in the official Gazette and by sending information to the members.

(3) The President shall have power to summon special meetings of the Board for the transaction of the business which he considers necessary, or in pursuance of a resolution of the Board or on a requisition signed by not less than seven members, and specifying the business to be transacted at such a meeting. A notice of three weeks to the members shall be necessary for the holding of special meeting.

35. *Staff.*—(1) The Central Board shall have a President and a Secretary who shall be Muslims, provided that no Mutawalli of a wakf or a Government Treasurer or a whole-time servant of the Government or the servant of any wakf Administration shall be elected as the President.

(2) Immediately after the formation of the Central Board and subsequently whenever it becomes necessary by reasons of an existing or anticipated vacancy or otherwise to appoint a President, the Central Board shall elect one of its members or any other person as its President. The President shall be honorary and shall hold office for a term of five years, but if he is a member of the Board his term shall expire on the expiry of his term as a member of the Board.

(3) The Central Board shall appoint one person qualified to carry on the work of the office of the Board as the Secretary. The Secretary shall be a salaried servant of the Board and shall hold office for a term of five years. He will be eligible for re-appointment after the expiry of his term. He will not be a member of the Board.

36. *Staff of the Central Board.*—The Central Board may appoint Secretary and such officers on staff on such salary and allowances and conditions of service as may be necessary for carrying out their duties under the Act, and for such period as they think fit.

37. *Functions and Powers of the Central Board.*—The functions and powers of the Central Board shall be—

(1) to lay down the principles for administration of wakfs ;

(2) to co-ordinate the activities of the various Boards in the matter of administration of wakfs and for that purpose to receive annual reports from the various wakfs Boards situated within the Union of India including the

wakfs Boards in U.P. and Bihar constituted under the various statutes and of Delhi and Ajmer constituted under the Central Acts and to give their opinion on such reports ;

(3) to give their advice to the various Boards specially in case such advice is sought by those Boards ;

(4) in case of persistent non-compliance with the advice of the Central Board by any Board of the State, the Central Board shall have the power to make a report to the Government of the State to take such action in respect of the Board as it may deem desirable.

38. *Finance of the Central Board.*—(1) The expenses of the office, officers and servants of the Central Board and the travelling and daily allowances of the co-opted members of the Central Board and of the President, if he is not a member of a State Board, shall be distributed equitably between the various State Boards, and in case of their being no agreement about it amongst the members of the Central Board, by the Central Union Government. The amounts so fixed shall be payable in advance every year.

(2) The travelling and daily allowances of the members of the Central Board shall be determined and paid by the various State Boards to which these members belong.

39. *Power to make Rules.*—(1) The Central Board may make rules not inconsistent with this Act for the purposes of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Central Board shall have the power to make rules with respect of—

(*a*) procedure to be adopted at the annual meeting and the special meetings of the Central Board ;

(*b*) quorum for meetings ;

(*c*) preparation and preservation of the record of the resolutions and meetings of the Board ;

(*d*) method to be adopted for the scrutiny of the administration Reports of the various Boards, and the procedure for giving advice in respect of them ;

(*e*) record of the advice tendered by the Central Board to various Boards of the State and steps taken in respect thereto.

CHAPTER IV.

Registration of Wakfs.

40. *Registration.*—(1) Every wakf whether created before or after the commencement of this Act shall be registered at the office of the Board.

(2) The Mutawalli of every such wakf shall make an application for registration within three months of his entering into possession of the wakf property, or in the case of wakf existing at the time of formation of the first Board, within three months of the formation of such Board.

(3) Applications for registration may also be made by wakf or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(4) An application under this section shall be accompanied by a true copy of the deed or deeds of wakf, together with a statement containing the following particulars as far as known to the applicant,—

(*a*) a description of the wakf properties sufficient for the identification thereof,

(*b*) the gross annual income from such properties,

(*c*) the amount of Government revenue, and cesses and of all rents and taxes payable in respect of the wakf properties,

(*d*) an estimate of expenses annually incurred in the realisation of the income of the wakf properties,

(*e*) the amount set apart under the wakf for—

(*i*) the salary of the Mutawalli and allowances to individuals ;

(*ii*) purely religious purposes ;

(*iii*) charitable purposes :

Provided that every such application shall be verified by the Mutawalli in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

(5) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(6) On receipt of an application for registration, the Board may, before registration of the wakf, make such enquiries as it thinks fit in respect of its genuineness and validity and the correctness of any particulars, in the statement filed with the application and when the application is made by any person holding possession of any property or properties belonging to the wakf, the Board shall give notice of the application to the person in possession and hear him, if he desires to be heard before passing final orders.

(7) An application for registration of wakfs may be presented or be sent by registered post to the office of the Board.

41. *Register of wakfs.*—The Board shall maintain a register of wakfs which shall contain the following particulars in respect of each wakf and shall also contain a copy or copies of the deed or deeds creating the wakf when available,—

(*a*) the names of trustees, Mutawalli and other persons connected with the administration of the wakf,

(*b*) the rule of the succession of the office of the Trustees (if any), or Mutawallis under the deed or wakf or by custom or by usage,

(*c*) particulars of the scheme of administration and the scale of expenditure at the time of registration,

(*d*) particulars of all properties relating to the wakf and all title deeds and documents relating thereto, and

(*e*) such other particulars as may be prescribed.

42. *Power to order Mutawalli to apply.*—The Board may direct a Mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself collect such information and may cause the wakf to be registered or may at any time amend the register of wakfs.

CHAPTER V.

Audit of Accounts.

43. *Audit.*—(1) The accounts kept by the Board and the accounts submitted by Mutawallis under section 62 shall be audited annually or at such other intervals as may be determined by the Board by the auditors appointed under section 18 of this Act.

(2) The Auditors shall submit their report,—

(*a*) to the local Government in the case of accounts of a Board ; and

(*b*) to the Board, in the case of the accounts of a wakf.

(3) The audit report of the auditors shall among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property or of loss or of waste of money or other property caused by neglect or misconduct of the Mutawalli.

44. *Examination of the Auditor's report.*—The Board shall examine the auditor's report and after calling for the explanation of any person in regard to any matter mentioned therein shall pass such orders on the report as it may think fit.

45. *Realization of Amount.*—Every sum certified to be due from any person by an auditor in his report under section 62, unless such certificate is modified or cancelled by the Board by an order made under section 32 and every sum due on a modified certificate shall be recoverable from such person by the Board.

CHAPTER VI.

Enquiry and Supervision.

46. *Enquiries by the Board.*—For the purpose of verifying the particulars contained in the statement filed under section 40 or acting on the report of the auditor submitted under section 43, the Board may enquire into any matter either through any of its officers or members or any other person appointed under this behalf.

47. *Application for enquiry.*—Any member of the community to which the wakf belongs may by an application, supported by an affidavit, apply to the Board to institute any enquiry relating to the administration of a wakf, and the Board may take such action as it may think fit.

48. *Powers of enquiring officer.*—For the purposes of an enquiry under this Chapter the enquiring officer or committee shall have the same power of enforcing the attendance of witnesses and production of documents as the Civil Court has under the Code of Civil Procedure, 1908.

CHAPTER VII.

Legal Proceedings.

49. *Civil suits relating to wakf.*—Notwithstanding anything contained in section 92 of the Code of Civil Procedure, 1908 (Act V of 1908), a suit to obtain any relief mentioned in section 92 of the said Code, relating to any wakf to which this Act applies may be instituted by the Board without obtaining the consent referred to in that section, or by any person interested in the wakf with the previous sanction in writing of the Board and without obtaining the consent referred to in that section :

Provided that if in such suit the validity or propriety of any order or direction passed or made by the Board is challenged a suit shall be instituted without previous sanction after giving two months notice to the Board as provided in section 50.

50. *Suits under Religious Endowments Act.*—A suit under section 14 of the Religious Endowments Act, 1863 (XX of 1863), concerning a wakf to which this Act applies, may, notwithstanding anything to the contrary contained in that Act be instituted by the Board without obtaining the leave referred to in section 18 of that Act, and no such suit shall be instituted by any person without the consent in writing of the Board.

51. *Protection of the Board Committees and their staff.*—(1) Save as otherwise provided in this Act, no act done or direction issued by the Board *except an order settling the scheme of management of a wakf* shall be questioned in any court.

(2) No suit shall be instituted against the Board, or any of its members or servants or any other person deputed by the Board for carrying out any enquiry under this Act, for anything done by it or him in good faith in due discharge of his duties under this Act.

52. *Compromise in suits by or against mutawallis.*—No suit or proceedings in any court by or against a mutawalli of a wakf to which this Act applies, and relating to title to wakf property or to the rights of the mutawallis shall be compromised without the sanction of the Board.

53. *Notice of suits by courts.*—When any suit relating to title to any wakf property or to the right of Mutawalli is instituted in any Civil Court such court shall give a notice of such suit to the Board at the cost of the plaintiff. The Board may thereupon apply to be made a party to the suit, and the Court shall make the Board a party on such an application.

54. *Notice of suits.*—No suit shall be instituted against the Board, in respect of any act purporting to be done by the Board in due discharge of its functions under this Act, or for any relief in respect of any wakf, until the expiration of two months next after notice in writing has been delivered to the Secretary, or left at the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims ; and the plaint shall contain a statement that such notice has been so delivered or left.

55. *Power of Board to make application to the court in case of failure of mutawalli to discharge his duties.*—Where a charge exists on any property for the performance of any religious, pious or charitable act recognised as such by Muslim Law and there is a failure to perform such an act the Board may apply to the Court for an order directing the person in possession of the property to pay to the Board the amount necessary for the performance by the Board, or to any person appointed by the Board in this behalf, of the act for the performance of which the charge was created.

56. *Application to compel mutawalli to discharge obligation or appointment of receiver.*—Where the mutawalli of a wakf wilfully fails to discharge any of the duty imposed on him under the wakf, the Board or any person interested in wakf may make an application to the court for an order,—

(*a*) directing the mutawalli to discharge such obligation within a time to be specified in the order, or

(*b*) appointing receiver of the funds and property of the wakf if the mutawalli fails to carry out such direction within the time so specified.

57. *Notice to Board of proceedings under the Land Acquisition Act, 1894, in respect of wakf property.*—(1) In the course of a proceeding under the Land Acquisition Act, 1894 (I of 1894), the Collector before making an award in respect of wakf property, shall issue a notice to the Board and shall stay further proceedings to enable it to plead as a party to the proceedings at any time within three months from the date of the receipt of the notice.

(2) Where the Board has reason to believe that any property under acquisition is a wakf property, it may at any time before the award is made appear and plead as a party to the proceedings.

(3) When the Board has appeared under the provision of sub-section (2), no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 (I of 1894), without giving opportunity to the Board to be heard.

(4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 (I of 1894), without giving opportunity to the Board to be heard shall be voidable at the option of the Board.

58. *Notice of sales to be given to Board.*—(1) Whenever any wakf property is notified for sale in execution of a decree of a Civil Court under the provisions of any Act, for the recoveries of public demand or in pursuance of a decree or an order of a collector or any revenue officer such court, collector, or revenue officer, shall give notice thereof to the Board also.

(2) If the notice required by sub-section (1) to be given to the Board in respect of any sale is not given, the sale shall be voidable at the option of the Board.

CHAPTER VIII.

Administration Charges.

59. *Contribution by wakf.*—(1) Every wakf to which this Act applies shall contribute annually for meeting the expenses incurred in the administration of this Act, such sum not exceeding five per cent of the net annual income of such of its property as is situate in the State as the Board, subject to the sanction of the State Government may determine :

Provided that in case of those educational institutions which do not receive any aid from the Government or of wakf whose income is less than rupees one hundred per annum the aforesaid percentage shall not be levied.

(2) Contribution under this section shall be payable with effect from the date on which this section comes into force.

(3) The Board may, in the case of any particular wakf or wakfs, reduce or remit such contribution as it may think fit.

(4) Such contribution shall, subject to the prior payment of any dues to the Government and any other Statutory charges on the wakf property or the income thereof, be a first charge on the income of the wakf.

(5) If a mutawalli or person incharge of the managing or administration of the wakf realizes the income of the wakf and neglects or refuses to pay such contribution he shall also be personally liable for such contribution to the extent of the balance of realization remaining in his hand after payment of Land Revenue, cesses and taxes due to Government and local bodies, and the liability may be enforced in the manner as aforesaid.

(6) The mutawalli of a wakf may realize the fee payable by him under sub-section (1) from the beneficiaries of such wakf, but the realizable fee from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion as the value of benefits recoverable by such persons bears to the entire net available income of such wakf :

Provided that, if there is any income of such wakf in excess of the amount payable as due under this Act other than the fee payable under sub-section (1) and in excess of the amount payable under the wakf deed, the fee shall be paid in the first instance out of such income.

60. *Board's power to borrow.*—The Board shall have the power with the previous sanction of the State Government to borrow for the purpose of giving effect to the provisions of this Act, such amount and on such conditions as the State Government may determine.

308

CHAPTER IX.

MUTAWALLIS.

61. *Appointment of mutawallis.*—When there is a vacancy in the office of mutawalli of a wakf and there is no one competent to be appointed under the terms of the deed of wakf, or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as a mutawalli from such period and on such conditions as it may think fit.

62. *Duties of mutawallis.*—(1) Every mutawalli shall carry out all directions consistent with the provisions of this Act, issued to him by the Board of wakf or by a committee appointed by the Board for the purpose of proper administration of wakfs. In particular he shall,—

(*a*) supply the details of wakfs in his charge,

(*b*) submit within one month after the 31st day of March, next following the date on which the wakf has been registered under section 28 and thereafter within thirty days of the 31st day of March, in every year, a full and true statement of accounts in such form and containing such particulars as may be prescribed by the Board and verified in manner prescribed by the Code of Civil Procedure, 1908, for verification of pleadings of all moneys received or expended by him on behalf of the wakf of which he is the mutawalli in respect of that portion of the wakf property which is situate in the State during the period of twelve months ending on the 31st March preceding the submission of such statement or during that portion of the said period during which the provisions of this Act have been applicable to the wakf :

Provided that the date on which the annual accounts are to be closed may be verified at the discretion of the Board.

(2) All the details, accounts, and statements mentioned in sub-section (1) shall be submitted to Board. The mutawalli shall if and when required further be bound by himself or by his agent to attend at the audit of his accounts and to give all information required relating to his accounts.

63. *Power of the Board to make certain payment on behalf of wakf.*—Where a mutawalli refuses to pay or fails to pay any Land Revenue, cesses, rent, rates of taxes due to the State or to a local Authority/Body from a wakf, the Board may defray the charges from the wakf fund and may recover the amount so paid from the wakf property and, if the refusal or failure of the mutawalli was in the opinion of the Board wilful, the Board may also recover from the mutawalli responsible for such refusal or failure damages at the rate of twelve and a half per cent of the amount so paid :

Provided that a mutawalli aggrieved by a decision of the Board to recover damages under this sub-section may apply to the court to have the order regarding damages set aside or modified and the order of the Court on such application shall be final.

64. *Removal of mutawallis by the Board.*—The Board may remove a mutawalli from his office if such mutawalli—

(*a*) after having once been convicted of an offence punishable under section 66 is again convicted of any such offence ;

(*b*) is convicted of an offence relating to the wakf property or money which in the opinion of the Board renders him unfit to continue to be a mutawalli ; or

(*c*) refuses to act ; and

(*d*) applies for being adjudicated or is an undischarged insolvent.

65. *Committee of supervision.*—(1) Whenever the supervision of a wakf is vested in any existing committee appointed by the wakf or any competent court of authority such committee shall, notwithstanding anything contained in the Act, continue to function until superseded by the Board under sub-section (2):

Provided that such committee shall be under the control of the Board and shall abide by such directions of the Board as are not inconsistent with any directions of the wakf or of the court or authority appointing such committee.

(2) The Board may supersede any such committee as aforesaid if it does no in its opinion function properly and satisfactorily, and on such supersession any decree or order of a court or competent authority under which such committee has been constituted shall cease to have any force.

(3) Any order passed by a Board under sub-section (2) shall be final and shall not be questioned in any court of law.

66. *Penalties.*—(1) If a mutawalli fails without reasonable cause or excuse, the burden of proving which shall be upon him,—

(*a*) to apply for a registration of a wakf as provided in section 28, or

(*b*) to submit statement of particulars or of accounts and returns as required by this Act, or

(*c*) to supply information or particulars required by the Board, or

(*d*) to allow inspection under the provision of this Act, of wakf properties and deeds and documents relating thereto, or

(*e*) to give assistance in enquiries and investigations when called upon to do so by the Board or Committee appointed by the Board or by superintendents or auditors working under the orders of the Board, or

(*f*) to deliver possession of any wakf property if ordered to do so, by the Board,

(*g*) to deposit any surplus income in his hands in any recognized bank when directed to do so by the Board,

he will, on conviction before a magistrate of the first or second class be punishable with fine which may extend to rupees two hundred and fifty for the first offence and to rupees one thousand for every subsequent offence.

(2) No Magistrate shall take cognizance of an offence under sub-section (1) otherwise than on a complaint made by any person duly authorised by the Board in this behalf.

CHAPTER X.

Rules and Bye-laws.

67. *Rules by State Government.*—(1) The State Government may after previous publication in the Official Gazette make rules not inconsistent with this Act for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the State Government may make rules with respect to all or any of the ollowing matters :—

(*a*) the conditions and restrictions subject to which the Board may transfer any property under sub-section (2) of section 7 of the Act ;

(*b*) the method in which the work of the survey of wakf under Chapter I is carried on ;

(*c*) the manner in which the member shall be elected under section 8 of the Act ;

(*d*) other matters expressly required or allowed by this Act to be prescribed or done by the State Government.

68. *Bye-laws by the Board.*—(1) The Board may subject to the approval of the State Government make bye-laws not inconsistent with this Act for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Board shall with the approval of the State Government have power to make bye.laws with respect to—

(*a*) all matters required or allowed by this Act to be prescribed or done by the Board,

(*b*) the conduct of business by the Board,

(*c*) the grant of travelling allowances to the President and members of the Board,

(*d*) the constitution, functions and procedure of the committee appointed by the Board and their finance,

(*e*) the custody and investment of wakf funds,

(*f*) the custody and investment of the Fund of any wakf, and the conditions subject to which a mutawalli shall deposit wakf money in his hands and the conditions subject to which a mutawalli can withdraw such money;

(*g*) books and accounts to be kept at the office of the Board and by the committee appointed by the Board;

(*h*) the manner in which the accounts of wakf shall be audited and published, the time and place of such audit, the form and content of the auditors' report and the scale of remunerations to be paid to the auditors,

(*i*) the number, designation, grades, salaries, allowances, and other conditions of service, including the power and duties of the officers and servants of the Board,

(*j*) the custody of the common seal,

(*k*) the person by whom receipts may be granted for money received by the Board,

(*l*) the granting of pensions and gratuities out of wakf Funds,

(*m*) the method of calculating the income of a wakf, for the purpose of levying contribution under this Act,

(*n*) the fee to be levied on applications before the Board of committees under the Act, or on application for inspection of register of wakfs and other records and for copies of the proceedings and other records of the Board.

(3) All byelaws framed under this section shall be published in the Gazette and shall have thereafter the force of law.

69. *Names of members and President to be notified.*—The names of the members and President of the Board shall be published in the Official Gazette of the State as soon as possible after their election or co-option as the case may be.

70. *Accounts and Budget of the Board.*—The Accounts of the Board shall be audited annually by an auditor appointed by the Government and a copy of the report and a copy of the Budget shall be submitted to the State Government and to the Central Board of Muslim Wakfs for information. The Board shall give such information and submit such reports and statements as may be called for by the State Government and Central Board of Muslim Wakfs.

71. *Extension of time.*—The Board may, if it is satisfied that there is sufficient cause for doing so, extend time within which any act is required or ordered to be done under this Act.

72. *Wakf Fund.*—All moneys realized under section 59 and all moneys realized from fees in respect of proceedings before the Board and all other moneys realized under this Act, shall form a Fund to be called the 'Wakf Fund'.

Such fund shall be under the control of the Board subject to the general supervision of the State Government and shall be applied to the following expenses which shall be met exclusively from that fund :—

(*a*) repayment of any loan incurred under section 60 and payment of interest thereof ;

(*b*) payment of the cost of audit of Wakf Fund,

(*c*) payment of the salary and allowances of the Secretary and staff of the Board and the Secretary and the staff of sub-committee under the Board ;

(*d*) payment of travelling allowances to the President, members, Secretary and staff of the Board or of any person deputed for any enquiry under the Act ;

(*e*) payment of all expenses incurred by the Board and the sub-committee in the performance of the duties imposed and the exercise of the powers conferred by this Act.

73. *Liability of Government for expenses.*—Government shall not be liable for any expenditure incurred in the administration of this Act.

CHAPTER XI.

Savings and Repeal.

74. *Savings.*—Nothing in the following Regulations, Acts and provisions shall apply to any wakf to which this Act applies :—

(*i*) Bengal Regulation, XIX of 1810.

(*ii*) Section 5 of the Religious Endowments Act, 1863 (XX of 1863).

(*iii*) The Charitable Endowments Act, 1890 (VI of 1890).

(*iv*) The Charitable and Religious Trust Act, 1920 (XIV of 1920).

75. *Repeal.*—The following Acts are hereby repealed :—

	Name of the Act	Extent of Repeal
1.	The Bengal Wakf Act, 1934 (XIII of 1934) ...	Whole
2.	The Mussalman Wakf (Bombay Amendt.) Act, 1933 (XVIII of 1933).	Whole
3.	Mussalman Wakfs Act, 1923 (XLII of 1923) in so far as it extends to the States where this Act comes into force.	Whole

76. *Recovery of dues by distress.*—Every sum recoverable under section 45 and the contribution under section 59 may be recovered by the Board by means of distress of sale of movable property belonging to the person liable for payment, in accordance with the rules framed by the State Government in this behalf.

STATEMENT OF OBJECTS AND REASONS.

The management of Wakfs though it vests immediately in a mutawalli, is a subject which requires the supervision of the State. The need for supervision has been felt, and in addition to various enactments dealing with the subject of charitable endowments, the Musalman Wakf Act, 1923 (No. 42 of 1923) was enacted for the whole of India. This Act merely provides for the submission of audited accounts by the Mutawallis, to the district judges. This Act did not prove of much practical value. The Musalman Wakf (Bombay Amendment) Act, 1935 (XVIII of 1935) amended the Musalman Wakf Act, 1923 (42 of 1923). The Bengal Wakf Act, 1934 (No. XIII of 1934) was enacted to create a machinery for the supervision of wakfs in Bengal. The U.P. followed suit and the United Provinces Muslim Wakfs Act, 1936 (XIII of 1936) was passed creating a Central Wakf Board. Similarly Bihar also passed a legislation almost on the same lines. The working of these Acts has brought out the necessity of some amendments. Further many of the States have got no Act for the purpose. It is therefore necessary, that one uniform and consolidated legislation may be passed by the Centre, which may be adopted as a model Act by the various States. It is with this view that the present Bill is introduced.

MOHAMMAD AHMAD KAZMI.